

# Social Questions

*Bulletin of the Methodist Federation for Social Service (unofficial), an organization which rejects the method of the struggle for profit as the economic base for society; which seeks to replace it with social-economic planning in order to develop a society without class distinctions and privileges.*

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## THE WAGNER ACT

The Wagner Act is a milestone in the progress of American democracy. It marks the establishment of democratic control over industrial relations. If that control is impaired by crippling amendments the development of economic democracy is halted.

### History

The Duke University *Law Review*, "Law and Contemporary Problems," (Spring, 1938) declares that "the Wagner Act derives principally from three sources in the experience of the federal government as intervener in industrial disputes."

The first of the three was the National War Labor Board, active from April, 1918 to August, 1919. This board had for its chief purpose the settlement by "mediation or conciliation" of labor controversies in necessary war industries. It adopted the policy of forbidding employer interference with the right of employees to organize and bargain collectively and employer discrimination against employees engaging in lawful union activities.

The second important source in experience basic to the Wagner Act was that derived under the Railway Labor Act of 1926 and the amendments thereto adopted in 1934. This act gave federal legislative sanction to the right of employees to bargain collectively free from interference, influence or coercion. Of special pertinence was the suppression of the company union and the system of elections devised for the purpose of determining employee representatives under the supervision of the National Mediation Board.

The third precursor of the present law was Section 7(a) of the National Industrial Recovery Act. That section required that "employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint or coercion of employers of labor or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; no employee and no one seeking employment shall be required as a condition of employment to join any company union or refrain from joining, organizing or assisting a labor organization of his own choosing." On May 27, 1935, the Supreme Court invalidated the Recovery Act and put an end to Section 7(a) as well.

In 1934 Senator Robert Wagner, aware of defects in the N. I. R. A., introduced in Congress a bill creating a National Labor Relations Board. The bill was defeated. Strikes and industrial disputes mounted, an impossible situation of conflict and chaos developed.

In 1935 the bill was offered again and on July 5 it was passed and signed by the President. Passage of the Act intensified bitter opposition. The National Lawyers Committee of the American Liberty League declared the law "unconstitutional" in its entirety and advised employers to disregard it. When strikes occurred as a result of widespread employer violation of the law, the press proclaimed the Act ineffective because it failed to "prevent strikes."

The early decisions of the N. L. R. B., established under the Act, were rarely obeyed. Its activities were impeded by injunctions instituted by employers to prevent it from holding hearings and otherwise carrying out its functions. Not until April 12, 1937, when the Supreme Court, in five test cases, held that the law was constitutional, did many employers begin to deal with unions. From that day forward there has been a considerable increase in the number of employers signing union contracts.

### Objective

The sole purpose of the Wagner Act is to make the employer enter into bona fide collective bargaining with his workers and to keep him from interfering with their organization. The law is designed to diminish labor disputes by removing recognized causes of industrial strife and by encouraging practices fundamental to friendly adjustment of industrial disputes.

Five unfair practices in labor relations are forbidden.

(1) Employers are prohibited from interfering with workers who wish to join labor organizations and to bargain collectively through representatives of their own choosing. Such interference may include: advice by foremen not to join the union, the use of spies to report on union activity, direct employer influence against unions, hiring thugs to beat up union members.

(2) The Act makes it unfair for an employer to dominate, interfere with or contribute financial support to an organization of his employees. Thus in effect the formation of company unions is considered an unfair practice.

(3) It is unfair for an employer to discriminate in any way against a worker by reason of his membership or activity in a union.

(4) The law declares it unfair practice to discharge or discriminate against an employee because he has filed charges or given testimony under this Act.

(5) It is unfair for an employer to refuse to bargain collectively with his employees. The employer retains his right to discharge an employee for just cause—disobedience, bad work, carelessness, drinking on duty.

The worker's claims to higher wages or to better working conditions are not defended by the N. L. R. B., according to Mary Heaton Vorse (*Labor's New Millions*, p. 241). It merely defends the worker's right to bargain with his employer, and to do this through his elected bargaining agency—the union of his choosing.

*How many of these "unfair practices" are to be found in the industries of your community? Is there any more effective way of eliminating them than by action of the N. L. R. B.?*

### *Record of the N. L. R. B.*

The National Labor Relations Board is the non-partisan, quasi-judicial body set up to administer the Act. It is composed of three members appointed by the President: J. Warren Madden, Edwin S. Smith, and Donald W. Smith. The *Labor Fact Book* (IV, p. 45) summarizes the function of the Board in this way:

"If a worker or union representative thinks that an employer has violated the Act, he files a notarized charge with the regional director of the N. L. R. B. If the director, after an investigation, believes the charge correct or warranted, he issues a formal complaint setting date of an open hearing to be attended by the employer and the complainant. This hearing is conducted by a trial examiner appointed by the N. L. R. B. in Washington. The trial examiner may then dismiss the case or recommend action to be taken by the employer to comply with the law.

"If the employer refuses, the trial examiner's report is sent to the N. L. R. B., which after considering the case, makes its decision and issues an order to the company. If the company still refuses to comply, the N. L. R. B. petitions a Circuit Court of Appeals for enforcement of its order. If the Circuit Court of Appeals upholds the Board's order, the employer must comply or be held in contempt of court, unless he takes the case to the United States Supreme Court."

A total of 18,073 cases involving 4,140,591 workers has been handled during the past 37 months, according to a press release of December 5, 1938. Ninety-four percent of the cases were disposed of informally and without public hearing. Of these 42 percent were disposed of by dismissal or withdrawal due to insufficient merit or proof. The remaining 52 percent secured settlements through employer agreements, consent election, check of union cards against payrolls or recognition of a majority representation without recourse to election or payroll comparison. Of the total cases closed 1,886 were strike cases involving 320,201 workers and of these cases 1,422, or about 75 percent, were settled and 214,396 workers were reinstated after strikes and lockouts. An additional 12,808 workers were reinstated

after discriminatory charges. Threatened strikes, totaling 647 and involving 166,958 workers, were averted through the Board's action.

"The sit-down strike has practically gone out of existence," according to Senator Wagner, "since the Act was held constitutional and given a chance to exert its pacific influence. During the first nine months of 1938 less time was lost because of strikes than in any comparable period since 1931." (*New Republic*, November 9, 1938, p. 5.)

The record in the Federal Courts reveals that all injunctions, 100 in number, intended to restrain Board action, were denied. Out of 53 petitions for review or enforcement in the Circuit Court of Appeals, the Board has been upheld 38 times. The United States Supreme Court has accepted 13 appeals involving the N. L. R. B., and upheld the Board in 12 of these cases. In the thirteenth case, the recent decision in the matter of Consolidated Edison, the Court upheld the principle involved in the Board order but modified its procedure.

The jurisdictional extent of the Act was established in the *Santa Cruz Fruit Packing Company vs National Labor Relations Board* (303 U. S. 453), and in the case of the *Consolidated Edison Company*. The Supreme Court, in these cases, held the Act applicable to a company engaged in the canning, packing and shipping of fruit whose processed products are part of the "stream of commerce." In the second case, the court sustained the jurisdiction of the Board over a public utility which operates within the State of New York, but which supplies electrical energy to many instrumentalities of interstate commerce.

In its decisions the N. L. R. B. has given detailed interpretation of the provisions of the Act and the unfair practices proscribed by it. Companies involved in cases coming before the N. L. R. B. include many of the biggest American corporations: Ford Motors, Bethlehem Steel, Republic Steel, Associated Press, Mackay Radio and Telegraph, William Randolph Hearst, Fruehauf Trailer Company.

In these and other cases the Courts have sustained the Board's position in holding that strikers retain their employee status even though the strike was not the result of unfair labor practice.

They have also established the power of the Board to order an employer who has engaged in unfair labor practices to reinstate striking employees, discharging, if necessary, persons employed since the commission of an unfair labor practice, and to withdraw recognition and disestablish a labor organization which the employer has dominated and interfered with, in formation or administration, or to which he has contributed support.

The N. L. R. B. decision (March 13, 1937), against *Remington Rand*, outlawed its "Mohawk Valley Formula," the main features of which were the employment of strike-breaking agencies, spies and armed guards; its anti-union propaganda; its insistence on individual bargaining.

*How fairly and adequately has the N. L. R. B. functioned in your town?*

### ***Attitude of A. F. of L. and C. I. O.***

President William Green has assailed the Board's administration and insisted on changes in its personnel. The executive council of the A. F. of L. accuses the Board of an "unholy alliance" with the C. I. O. and, by the effect of its decrees, of actually recruiting members for Mr. Lewis' army. (*N. Y. Herald Tribune*, October 3, 1938.)

Leaders of the C. I. O. criticize decisions of the N. L. R. B. which favor craft division where workers need industrial unity. President James B. Carey, of the United Electrical Radio and Machine Workers, says "The law itself is clear. We only want enforcement of the law as it stands. It should not be used unfairly to help the A. F. of L. win."

The Law School of Columbia University (current issue of the *Law Review*) finds, in the midst of this heated controversy over the Wagner Act, that the N. L. R. B.'s policy in the decisions it has so far rendered has favored the A. F. of L. rather than discriminated against it. Although the C. I. O. has won almost 79 percent of the cases in which the Board has decided jurisdictional disputes between the A. F. of L. and the C. I. O., the policy of the Board is to give preference to craft units over industrial organization wherever the majority of those within the craft so desire. It has also helped the A. F. of L. by refusing to exclude A. F. of L. unions which have been aided by employers from the ballots in the elections it supervises.

These facts leave the editors of the *Law Review* in doubt as to how much of the violent criticism of the N. L. R. B. by the A. F. of L. has been in earnest. They feel certain, however, that amendment of the Wagner Act, as proposed by the A. F. of L. to allow judicial review of findings of fact, would prove extremely advantageous to recalcitrant employers and of doubtful value to the A. F. of L.

***What is the relative strength of your local A. F. of L. and C. I. O.? What are their respective attitudes toward the N. L. R. B.? Why?***

### ***The Fight Against the Act***

The criticism of the Wagner Act has come mainly from the same open-shop forces that fought the law's enactment and tried desperately to block appropriations for its enforcement. The National Association of Manufacturers and the Chamber of Commerce have joined Senators Nye and Vandenberg and Representatives Dies and Thomas in charging that the law is unfair. There is a strong campaign under way to "take the teeth out of" this "one-sided un-American law." The Walsh Bill (S-2108), the Dies Bill (H.R. 6143) and the Vandenberg Bill (S-2712) propose amendments to the Act which would enable it to serve the interests of business rather than of labor, of suppression of labor unions rather than of their development.

It has been suggested that instead of protecting workers from coercion by an employer in regard to their right to organize, bargain collectively and engage in other

concerted activities, they should be protected from "coercion from any source whatsoever." This suggestion was made at the time the Act was originally passed and was thoroughly debated in Congress and rejected. If this change were made, many legitimate activities of labor unions (including peaceful picketing and propaganda) would be outlawed on the ground that in one way or another they interfered with the rights of other workers to engage in activities guaranteed to them by law. The proceedings of the Board would be delayed interminably, the Board itself would become a censor of all activities of labor unions and the purpose of the Act would be defeated.

Another suggestion has been made that elections to determine "employee representatives" be held at the request of the employer as well as of employees, which would allow employers to choose a time when the union is weak in order to establish a company union at the plant.

It has also been recommended that provisions be put into the Act outlawing strikes unless they are called by majority vote taken by secret ballot. Most legitimate labor organizations require a more substantial majority than this before a strike call is issued. However, the fact remains that it would be highly dangerous to begin this sort of regulation. The right to strike would be threatened at its foundation and the object of the Board in assisting labor organization would be destroyed.

It is sometimes said that the Act should be changed to outlaw so-called unfair labor practices by employees as well as by employers. The answer to this is that the Act was intended to equalize an unequal situation and for that reason gave protection to employees only, and protects only their democratic right to organize. Against other actions of labor, employers are protected by existing laws and by their own economic position.

***Who and what constitute the spear-head of the anti-N. L. R. B. drive in your city? How can such forces be brought out into the open?***

### ***Protect the Act!***

John L. Lewis, C. I. O. chairman, has declared, "The C. I. O. will continue to oppose any effort to amend the Wagner Act." (*C. I. O. News*, September 10, 1938.) Daniel Tobin, International President, Teamsters, Chauffeurs, Stablemen, and Helpers (A. F. of L.), has stated: "We will be confronted with amendments from the reactionary employers and from anti-labor office-holders who will try to destroy the very Act for which we have given our lives. The Wagner Act has done more to strengthen our Federation than any other law ever enacted." (*Labor Notes*, November, 1938, p. 6.)

Several state and city A. F. of L. organizations have declared their opposition to any amendment of the Wagner Act, as have the American Civil Liberties Union, International Labor Defense and the Southern Conference for Human Welfare, Birmingham, Alabama.

***The defense of the Wagner Act is the holding of a key position for the advance of democracy.***

—THE REV. JULE AYERS.

## BOOK RECOMMENDATIONS

Labor Research: *Labor Fact Book* (International Publishers, \$2.00).  
 R. R. Brooks: *When Labor Organizes* (Yale University Press, 1937, \$3.00).  
 Vorse: *Labor's New Millions* (Modern Age Books, 75c).  
 Huberman: *The Labor Spy Racket* (Modern Age Books, 35c).  
 Minton and Stuart: *Men Who Lead Labor* (Modern Age Books, 35c).

## PAMPHLET RECOMMENDATIONS

*Labor on New Fronts* (Public Affairs Pamphlets, 8 W. 40th St., N. Y. C. 10c).  
*Shall Strikes be Outlawed?* (League for Industrial Democracy, 112 E. 19th St., N. Y. C. 15c).  
*Anti-Labor Activities in the U. S.* (L. I. D. 15c).  
*National Labor Relations Board—Why and How.* (Council for Social Action, 289—4th Ave., N. Y. C. 10c).  
*Your Rights Under the N. L. R. A.* (C. I. O. Legal Dept., 1106 Connecticut Ave., Washington, D. C. 10c).  
*The Program of the C. I. O.* (C. I. O., Washington, D. C. 10c).  
*Protect the Wagner Act.* (C. I. O., Washington, D. C. 5c).  
*Labor Notes, February-November, 1938.* (Labor Research, 80 E. 11th St., N. Y. C. 12 issues, 65c).  
*Inland Steel Co. vs Steel Workers Organizing Committee—Written Agreements in Collective Bargaining* (N. L. R. B., Washington, D. C.).  
*Collective Bargaining Under the Wagner Act* (School of Law, Duke University, Durham, N. C. 75c).  
*Influence of the N. L. R. B. Upon Inter-Union Conflicts* (Columbia Law Review, Nov., 1938, Columbia University, N. Y. C. 85c).  
*National Labor Relations Board, Releases and Reports* (N. L. R. B., Washington, D. C.).  
*Industrial Conflicts—Strikes* (National Council Methodist Youth, 740 Rush St., Chicago. 15c).

PEACE POLICY  
AND PROGRAM

The Executive Committee, in its October 10, 1938 session, seriously considered the requests submitted by various members of the Federation that through our *Bulletin* some sort of questionnaire be conducted on a peace policy and program.

The Committee voted (1) that we should let our members know through the *Bulletin* that at the coming Biennial National Conference this will be a major question; (2) that there be citations of reference material bearing on the subject in the coming issues of the *Bulletin*; (3) that members who cannot be present at the Conference be informed that they can send in their opinion, which will be duly presented to the Conference.

MAY BIENNIAL  
CONFERENCE

The next Biennial National Conference of the Federation will be held in Kansas City, Missouri, on Tues-

day, Wednesday and Thursday, May 9, 10 and 11. The Uniting Conference will be meeting in Kansas City at this time.

## FINANCES

The Federation office is sending out what amounts to a three-point pledge-sheet with an "I will" that includes:

- (1) Increase my own annual pledge to \$.....
- (2) Secure at least one new member.
- (3) Persuade a local church organization to contribute to the Federation.

May we lay special stress on "Secure at least one new member"? Figures—if they're condensed enough—do speak.

Our approved budget for the coming year totals \$8,098.00.

Our estimated income based on that of the past year is \$5,750.00.

We must raise \$2,348.00 more.

Two thousand two hundred forty-six Federation members paid their subscriptions in full from October, 1937 to October, 1938.

If each old member secures a new member, the problem will be solved. And our message will be spread at least twice as far—after all the most important objective we can attain.

## BOYCOTT QUESTION

The Federation has just issued a pamphlet on the boycott question. It includes a boycott excerpt from the Basic Statement by the General Conference Commission on World Peace; Dr. Ward's Open Letter in reply and a Methodist Layman's letter to the Commission; a brief summary of facts, of the relation between the boycott and the embargo and of the main questions at issue. It concludes with a reprint of the petition put out by the Rochester Federation of Churches for the benefit of those who wish to help end our participation in Japanese aggression. Appended is a boycott bibliography. It sells for \$2.00 a hundred and should be used by all those who would clarify their thinking—pro or con!

## VOCAL MINORITIES

The Indiana Conference Federation Unit has not only set up a functional organization with Committees on Civil Liberties, Social Education, Social Legislation, the Co-operative Movement, and War and Peace, but has also published three issues of "Notes" for its members. These "Notes," one page of mimeographed material, edited by the Rev. Henry A. Mayer, the Secretary of the Unit, are unique. They contain editorials, news items, book reviews and calls to action. A typical quotation: "We are a minority, but a vocal minority can sometimes raise enough noise to get something done."

The Eastern Regional Conference of the M. F. S. S., held at the Union Theological Seminary, New York City, December 2nd and 3rd, was attended by 99 registered delegates. The resolutions adopted will be summarized in the April SOCIAL QUESTIONS BULLETIN.

The Troy Conference Committee on Education in Social Action held a Seminar, 35 ministers and laymen.

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